

**ASPECTS OF WOMEN'S WORK AND EMPLOYMENT IN
BANGLADESH : INTERNATIONAL VIS A VIS DOMESTIC
LEGAL FRAMEWORK**

by

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Introduction

Women in Bangladesh comprise of nearly fifty percent of its entire population. The status of women in Bangladesh as indicated from socio-economic indicators as well as legal position, is lower than that of men in the society.¹"The basis of inequality of sexes in Bangladesh can be traced back to two sources: firstly the lower stage of economic development which deprives women of education and employment opportunities and in turn sets a normative value system which relegates them to an inferior position in the basis of spurious rationalization, and secondly, the legislative and economic policies formulated by a male dominated state machinery geared to male interest with the assumption that the ripple effect will eventually extend to women."² The overall inequality prevalent today, social, economic as well as legal has in many ways been to the utmost disadvantage of women in taking part in nation building. Whereas they are declared as equals under the Constitution of Bangladesh, there are many aspects within the society as well as the law, which does not have the desired effect of equality of men and women. A necessary precondition of development of any country is the active participation of both men and women in the economy without being subject to discrimination of any kind. The issue of advancement of women's role in the economic sphere depends on a number of factors including the legal framework which lays the foundation of the

1. Chaudhury and Ahmen, 'Female Status in Bangladesh', (1979), 155-158.

2. Khan, Salma, 'The Fifty Percent-Women in Development and policy in Bangladesh', (1988) 132

manner in which women are able to participate in the economy. It is therefore an integral part of the issue of women's work and employment. However, law is a social science and in that respect the relevance of law depends great deal on the social context on which it is built, they are like two sides of the same coin, where one is inseparable from the other. This article attempts to evaluate the various aspects of women's work and employment in Bangladesh and the legal framework on which it is based.

The Ideology of Women's Work:

Women's work or employment in Bangladesh includes a wide range of activity starting from home based production to official posts in the government. During historical times when the entire region of Bengal was entirely agriculture based, evidence shows that women were involved in a number of activities in crop processing as well as in the manufacture of crafts. Due to the socio-cultural values prevalent in the society, they were traditionally segregated from men and their work was usually within the boundaries of their households, either processing rice the main crop of this region, or in the production of local crafts and textiles. Women were, by all descriptions 'out of sight' and their role in the economy as termed by many writers was almost entirely 'invisible'. The traditional division of labour between women and men, men as the producers of economic goods and women the reproducers of human beings a strong ideological factor that was responsible in many ways for their disadvantageous position in playing a role in the economic sphere. The area of activity for men has largely been the productive and public domain while for women it was the domestic arena.³ Since the work of men are in public and in production, it is valued in cash economic terms, i.e. it has cash value. But the work of women which is mostly done within their private world

3. Khan Z.R., 'Women, Work and Values', (1992), 178

of the household *is not* considered of such value, but has only 'use' value. Moreover, male producers are ideologically conceptualized as breadwinners and therefore responsible for women. Women's behavior within the norms of this ideology symbolizes the 'prestige' of men which in turn is equated with the 'honor' of women, of women, and the preservation of this honor so as to maintain the prestige of men becomes the focal point of ideology relating to women's work.

The ideology relating to women's work is indeed in no way conducive to the promotion of women's economic activity in Bangladesh. This is reflective of the social bias that women face in most areas of their lives. Persistent social discrimination causes them to be less educated than men, to have less financial resources than men and also have a poorer nutritional status than men. Moreover women are also the worst sufferers of the economic hardship and poverty that the country faces today. The availability of other resources such as bank loans are difficult to come by due to their inability to provide sufficient collateral for such loans. These are some of the factors that prevent women from gaining economic emancipation in Bangladesh and the majority of women in the country live within a cycle of poverty with little opportunity of work and pay.

Census Data on Women's Works:

To a large extent the existing confusion regarding women's work and its economic value is aggravated and strengthened by the vagueness of the census definition of women's work. Studies have shown that the vagueness of census reports have hindered the clear-cut understanding of female participation in the national economy. The measurement of female labour force participation and analysis suffers from gross under enumeration, and inadequate attention to unpaid family labour. There are poor conceptualizations of female work styles, mistaken perception of female economic

roles.⁴ The 1981 census found the female labour force rate to be 4.3%, whereas the BBS Survey (1983-84) showed the rate to be around 8%.⁵ But many micro studies as those of the Bangladesh Unnayan Parishad's survey in 1982 reveal that the female labour force participation in Bangladesh was between 8 to 18%. The BBS Survey in 1989 showed a spectacular change in the rate of female labour force participation, from 8% in 1983-84 it had risen to 61%⁶ The differences in census documents may in part be due to the problem of definition of women's work in general, specially where the definition had tended to exclude home based production of women before but has included the same in recent years. The 1989 and 1990 Labour Force Surveys also used wider definition of female participation and due to this an unusually large figure of 62 and 58 percent were given for the years 1989 and 1990 respectively. Much of these activities are however concentrated in the rural areas. For urban areas the participation rate for females increased from 14.9 in 1985-86 to 30 percent in 1990. The women in urban areas are concentrated in agroindustries, manufacture and transports, with a negligible proportion in professional and technical, administrative, managerial or clerical occupations. It is evident from the wide differences in participation rates of women in the labour force between each statistical report is a result of conceptual problems and these have hampered the correct evaluation of women's work and employment. However the correct evaluation of women's work would definitely help plan strategies of mainstreaming women into development process.

The labour market is segmented into formal and informal. Informal sector employment is by far the largest area of concentration and includes agricultural home based production to domestic service.

4. Salahuddin and Shamim, 'Women in the Urban Informal Sector', (1992), 28

5. Bangladesh Bureau of Statistics, Statistical Yearbook, 1983.

6. *ibid.*, 1989.

Whereas the formal sector itself is small in Bangladesh due to the rural and agricultural nature of the country, it has however in recent years gained substantial ground and new industries such as garments are employing large numbers of women.

In the rural areas as well as the urban areas women under the changed socio-economic situation, are breaking away from traditional norms and are taking up waged employment including work previously regarded as men's work. In the rural areas work such as earth cutting, and in the urban areas in construction work and industrial employment are being taken up by women. However the most significant feature in the urban areas in recent years is the entry of women in formal sector work in export oriented garments factories, fish processing, electronics, etc. According to Salahuddin and Shamim, the supply of female labour may no longer be the real problem arising from the institution of purdah and so on, on the contrary the real constraint is the inadequate demand for women's labour as well as barriers within the labour market which segment it⁷. Furthermore the lack of education and low level of skill, lack of access to resources as well as high domestic responsibilities are barriers for women to take up better opportunities than what is already available. It is precisely because women are newcomers to non-traditional employment and also because the trend is towards greater participation of women in different spheres of work and employment in future the need to preserve their rights to such work and under such work is vital. This is where the legal framework of their work and employment comes out as the key issues. Even though law cannot in any way solve all the problems regarding work and employment, and that the vast majority of women who are working in the informal sector are well beyond the scope of employment law, it is however necessary to provide its benefits to those who are atleast covered by

7. *ibid*, 29.

the law and also try to bring as employment needs to be provided for the vast numbers of labour in Bangladesh not only for the removal of unemployment as well as the maintenance of labour standards in the country.

The following is a discussion on the development and aspects of different international and domestic law that form the basis of the legal framework of women's employment in Bangladesh.

Women's Work, Employment, and International Law:

The very first international concern against discrimination of the most common types, namely, sex, language and religion was reflected in the United Nations Charter, which sought to remove such discrimination globally through the combined effort of all member countries. This international treatise born from the bitter memories of the two World Wars was the first brave step towards the removal of discrimination from all levels of human society. Bangladesh as a member of the UN. is also bound by the policies of the U. N. towards the removal of discrimination as well as to the establishment of equality between men and women in society. The commitment of the world community towards establishing equality for all human beings also include equality of opportunity and work for all for these are the most basic of human rights.

The U.N. Charter forbids discrimination on the basis of sex, language and religion (Art. 1 para 3). The Universal Declaration of Human Rights under Art. 2 Expands the mandate of the U.N. to promote human rights for all without discrimination. Art. 23 of the Declaration lays down that "everyone, without any discrimination as to race, nationality or sex has the right to equal pay for equal work".

With the beginning of the U.N. Decade for Women in 1975, the above international concern for the promotion of equal rights for men and women was set on its path towards its ultimate goal. There were

earlier effort by different quarters in different countries and mostly by the women themselves to improve their own lot, and there were considerable activism in most countries of the world including Bangladesh for the promotion of women's issues. However the event in Mexico city was the first occasion in history when women representing all regions, all cultures, all religions, all political systems met in the same place at the same time, seeking a common vocabulary with which to make common cause. "Inevitably there were uncertainties confessions, conflict. But these tended to be submerged in an overwhelming eagerness to create a global movement of sisters..."⁸ The bright expectations of the women were enshrined in the documents of the International Women's Year and became the first international manifesto of feminism. The Recommendation of the U. N. World Conference of International Women's Year (Mexico, 1975) laid down that national governments shoulds : Promote change in social and economic structures to make for full equality of women and their free access to all types of development, without discrimination of any kind to all types of education and employment; Provide equal oppor tunity for both sexes in education and training at all levels, coordinating educational, training and employment strategies through different means specified under the document; Formulate policies and action programs to promote equality in work, through different means such as legislation stipulating the nondiscrimination on the grounds of sex or marital status, special efforts to eliminate unemployment and underemployment of women, guaranteeing right to equal pay for equal work, etc.⁹ On the other hand it also laid down the responsibility of International agencies to assist governments to develop and sustain programmes towards the said goals. It further

8 . Mair, L.M., 'International Women's Decade A Balance Sheet', (1985), 2.

9 . Recommendations of the U.N. World Conference of International Women's Year, Mexicl, (1975), para 10 clause in, ii, and iv.

mentioned that the International agencies proclaim the decade 1975-85 as the U.N. Decade for Women : Equality Development. Peace, to ensure that national and international action is sustained throughout the period. The Declaration on the Elimination of Discrimination against Women (U.N. 1979) laid down in concrete terms that an equal opportunity for economic participation is or should be the right of all men and women, because 'discrimination against women is incompatible with human dignity and the welfare of the family and of society'. The right to work and equal pay of equal work are therefore the most basic human rights and have been recognized as such under international law.

The subsequent major step taken towards promoting an international consensus on issues relating to women was in Copenhagen in 1980. The Copenhagen Conference of the U.N. Decade for Women : Equality, Development and Peace laid down further recommendations for national governments, international agencies as well as N.G.O. Some of the provisions relating to women's employment were as follows. It said the national government should: Organize the unorganized working women for protection against exploitation and socio-occupational immobility through education, supportive child care services and employment information, initiate consultations between government and employers and employee's organizations to examine and improve the conditions of women workers, investigate whether unpaid household work and other productive occupations can be recognized and reflected in the official data collections, as well as various other recommendations.¹⁰

As to decisions for implementation by international agencies it stated that international agencies should : develop new approaches for increasing mobilization of women specially of the poor sectors both

10. Clauses 4,5, and 15 of Recommendations of the World Conference to the U.N. Decade for Women, Copenhagen, (1980).

for advancing their socio-economic status and increasing productivity; the I.L.O., in co-operation with UNESCO and, FAO, and WHO should continue and develop studies to assess employment, health and educational conditions of migrant women to assist governments in reviewing their policies concerning unemployment, social security, social welfare; etc.¹¹

The Nairobi Conference in 1985 set forth the Nairobi Forward Looking Strategies and adopted after reviewing and appraising the UN Decade for Women, : Equality, Development and Peace, which was endorsed by the UN General Assembly in its Resolution 40/108. The past two decades have seen the rising hope and aspirations of women in the world community. The adaptation of Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and, outcomes of three World Conferences in Mexico, Denmark, and Nairobi, created significant impacts on the cause of women. In all of these documents the need for women's participation in all the spheres of national development such as social, political, as well as economic has been highlighted. Bangladesh being a signatory to both the Nairobi Forward Looking Strategies as well as the Convention on the Elimination of All Forms of Discrimination Against women saving articles 2, 13(a) and 16(1) (c) and (f), is committed to the strategies of the NFS and CEDAW towards the women's cause as laid down under these documents. Such as gender equality, women's autonomy, woman's paid work, health services and family planning, better educational opportunities, and promotion of peace.

The other important factor within the international context regarding work and employment in Bangladesh was the ratification of different ILO Conventions by the country. Even though most of these conventions are aimed at men as well as women, some of the

11. Clauses 1 (i), *ibid.*

conventions that have been ratified by Bangladesh concern women only or are aimed at removing discrimination in employment and occupation on sexual and other grounds. For example, Convention no. 4 regarding employment of women during the night. Art. 3 of Convention 4 states that Women without distinction of age shall not be employed during the night in any private or public industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, this article was subsequently revised as Convention no. 89 along with a few exceptions to the general rule. Art. 2 of Convention 45 states that no female, whatever her age, shall be employed on underground work in any mine. Convention 111 concerning discrimination in respect of employment and occupation states that under the convention the term 'discrimination' includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or treatment in employment or occupation; By ratifying the I.L.O. Conventions Bangladesh's policy was directed towards improving the labour standards in the country.

The above discussion was an insight into how the issues of equality between men and women emerged from the different U.N. conferences over the last fifty years or so, and to what extent Bangladesh as a member of the U.N. as well as I.L.O. is bound by international convention to provide equality to men and women in the sphere of employment and occupation.

Domestic Law and its Implications

The domestic law of a country is another significant element for women's work and employment and the participation of women in all levels of occupation. The domestic law would include the

Constitution as well as the codified law relating to work and employment.

(a) Constitutional Guarantees :

The Constitution of the People's Republic of Bangladesh¹² under Art, 20 states that work is a right, a duty and a matter of honor for every citizen who is capable of working, and everyone shall be paid for his work in the basis of the principle 'from each according to his abilities to each according to his work'. Under Art. 23(4)¹³ it states that 'Nothing in this article shall prevent the State from making special provision in favor of women or children or for the advancement of any backward section of citizen, Furthermore, under Art. 27 it states that all citizens are equal before the law and are entitled to equal protection of the law. Art. 28 states that the State shall not discriminate against any citizen on grounds of sex.¹⁴

Art. 29 of the Constitution states that-(1) there shall be equality of opportunity for all citizens in respect of employment or office in the service of Bangladesh;

(2) no citizen shall on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of employment or office in the service of the Republic;

(3) nothing in this article shall prevent the state from

(a) making special provision in favor of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic;

(b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination;

12. The Constitution of the People's Republic of Bangladesh, (1972)

13. Art. 23(4), *ibid.*

14. Art. 27 and 28(1), *ibid.*

(c) reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuitable to the members of the opposite sex; Furthermore, in the exercise of these provisions, 15 seats of Parliament are reserved for women members exclusively.

From the above articles of the Constitution of Bangladesh it is somewhat clear that in spite of the fact it attempts to provide equality of opportunity for all irrespective of race, religion or sex, it also retains the power to reserve certain categories of employment for one particular sex in the exclusion of the other, and thereby is self-defeating. According to Salma Sohhan the tenor of all these provisions read as a whole makes it obvious that the drafters of the Constitution could not fail to acknowledge tacitly the fact of inequality present in the status of women, women are thus bracketed with children and other 'backward sections of society' in the attempt to prevent them from exploitation. In their sincere endeavor to create equality, the drafters have also accepted the prevalent inequality in society and the notion behind it seems to be that the vulnerability and exploitability is inherent to women rather than a social phenomenon.¹⁵

(b) Codified Law:

Besides the Constitution other legislative enactment and specially the labour law of the country is also an indicator as to whether the system is itself complementary to women's employment. But before going into any discussion on these legislative enactments it is pertinent to specify that the bulk of these legal enactments apply to women enactments it is pertinent to specify that the bulk of these legal enactments apply to women workers in the formal sector only, the majority of women toiling away in the informal sector can have no

15. Sobhan, S., 'Legal Status of Women in Bangladesh', (1978), 5

recourse to such legislative measures.¹⁶ Some of the most important legislative enactments are as follows : The Workman's Compensation Act 1923. The Payment of Wages Act 1933, The Minimum Wages Ordinance 1961, The Shops and Establishment Act 1965, The Employment of Labour Standing Orders act 1965, The Factories act 1965, The Industrial Relations Ordinance 1969, and The Maternity Benefits Act 1939.

Of the above mentioned Acts, the Factories Act, The Shops and Establishments Act and The Maternity Benefits Act cover the working conditions, including safety provisions, hours of work, overtime and so on. The Employment of Labour Standing Orders Act and the Industrial Labour Relations Ordinance cover situations of conflict at work, as well as providing the definition of the term 'worker'. In the following pages a brief discussion of the provisions of some of these Acts are given with special emphasis on those that affect women workers.

The Factories Act 1965

The Factories Act was passed by the British Govt. in India with a view to improving the health, safety and welfare standards of mills and factories that were built during those times. Numerous amendments were made to it and its present form has continued from 1965 with some minor changes from time to time. It defines a factory as a premise including the precincts thereof, where ten or more workers are working or were working on any day of the preceding twelve months and on any part of which a manufacturing process is being carried on with or without the aid of power, but mines are excluded from this definition.¹⁷ The Government may also declare that all or any of the provisions of this act shall apply to premises where five or more persons are working under same conditions. The Factories

16. Salahuddin, K. and Shamim I, op cit., 31

17. Section 2, clause (f) of The Factories Act (1965)

Rules specify the mandatory responsibility of the owner to have the plans of construction or extension of any factory to be approved by the Chief Inspector.¹⁸ Under various sections of this Act the provision for adequate and hygienic latrines, washing and bathing facilities, separately for male and female workers are made. Adequate first aid materials are provided. The minimum numbers of these for specified numbers of workers are also provided under the Act. Canteens are to be provided for factories employing 250 workers and lunch rooms, shelter and rest rooms for those employing more than 100 workers. Here we see that the legislators had concern towards the welfare of women workers for having specifically mentioned that separate facilities be provided for men and women workers. Another special provision for women only is that of creche for the children under the age of six of women workers in factories where 50 or more women are working.¹⁹ Further additional facilities for washing and changing the children, and the provision of milk and a wholesome diet can also be ordered by the Government.

In the case of working hours the Act provides that in general factory workers are not required to work more than 48 hours a week, or nine hours a day, Male workers may work overtime for up to 19 hours everyday. No worker should be required to work more than 60 hours a week and spread over the whole year they should be 56 hours a week on the average. Section 65 of the Act however states that no such exception shall be made available to women workers. Women are also allowed to work in the factories between 7 a. m. and 8 p. m. thus prohibiting night work for women. There is also provision for rest and no worker is to be made work for 6 hours at a stretch without an hours break, after a five hour stint, and two such breaks if the shift is 8 and 1/2 hours long. The provision for weekly holiday is on Fridays, if

18. Section 2 of Factories Rules, (1979)

19. Section 47 of The Factories Act (1965)

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it is not possible to give holiday on that day than it has to be given either on a Thursday or the Saturday.²⁰ Standards have also been set on the maximum weight that men, women and children are legally allowed to carry, and women and children have been disallowed to work on or near machinery that are considered dangerous.²¹

There are further provisions regarding the health and safety standards of the factory that affect the working environment of the factory. These include cleanliness, disposal of wastes and effluents, ventilation and temperature, dust and fumes, artificial humidification; lighting and overcrowding. The rules lay down in detail how the overall standards of safety and cleanliness are to be maintained in the factories.

The Shops and Establishment Act which covers different categories of commercial establishments, such as hotels, restaurants or cafes, cinemas, or clerical sections of factories, industrial establishments where articles are produced, and shop premises for wholesale or retail of commodities or articles, also lays down the rules regarding health, safety, welfare and other measures. Here too there is restriction on women's night work i.e. work done between 8. p. m. and 7 a. m.²²

The Industrial Relations Ordinance, 1969

This is an important piece of legislation which primarily deals with formation of trade unions, the regulation of relations of any difference or dispute arising between workers, workers and employers or between employers. Even though there are no gender specific provisions under this act it is still an important piece of legislation which affects all workers in general. Sec. 15 and 16 lays down a list of unfair labour practices on the part of the employer as well as those of

20. Sections 50 to 65, *ibid*.

21. Section 48 of the Factory Rules (1979), and Section 29 of the Factories Act, (1965)

22. Section 23(2) of The Shops and Establishments Act (1965).

workers, these these list are quite exhaustive and the offences mentioned here are punishable under the Act. It is also mentioned under sec. 24 to 33 how and by what steps the industrial ldisputes may be resolved, namely by way of joint consultation, conciliation, and mediation. The Act also under Sec. 35 to 37 provides for the formation, powers and procedures to the Labour Court. The Court consists of a Chairman appointed by the government and two members to be appointed in the prescribed manner to advise the Chairman, one representing the employers and the other representing the workers.²³ The Labour Court follows the summary procedure as prescribed under the Cr.P.C., on the other hand the Act states that 'Court shall, for the purpose of adjudicating and determining any industrial dispute, be deemed as a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure.²⁴ Thus the Labour Court has a mixture of procedures both civil and criminal. The Act also provides for punishment of offences under the Act as well punishments for the failure to implement settlement, for illegal strike and lockout, for go-slow, etc.

Originally the Act did not extend to individual grievances of workers, but its scope has been widened to allow an individual worker to apply to the Labour court for the enforcement of any right guaranteed or secured to him by or under any law or any award or settlement.' The Act also includes the provisions relating to the functioning of trade unions.

The Employment of Labour (Standing Orders) Act, 1965

Among all the labour legislation in Bangladesh this piece of legislation contains some of the most important aspects of the entire

23. Section 35(2) of The Industrial Relations Ordinance, (1969).

24. Section 36(1) and 36(2), *ibid*.

body of law and is also probably the most widely used. The Employment of Labour (Standing Orders) Act covers the such important issues as the definition of who is a worker as well as the procedures by which the employment of a worker maybe ended by the employer. Under Sec, 4 the act classifies all workers employed in any shop or commercial establishment or industrial establishment, these are: apprentice, badlis, casual, permanent, probationer and temporary. Sec. 5 of the same Act provides the procedure as to how a worker may apply for leave and holidays to the employer. The period of probation is six months including breaks due to leave, illegal lockout or strike. This period may be further extended upto an additional three months in case of a skilled worker in cases where it has not been possible to determine the quality of his skill.²⁵ The Act also provides the procedures for stoppage of work, retrenchment, discharge, dismissal, and termination of employment.

The workers service may be ended in a number of ways, and different disadvantages as well as advantages accrue from each of these modes. The following are the three categories of ending the services of a worker:

(i) Dismissal means the ending of services of worker by the employer for misconduct as defined under Sec. 18 of the Act and includes 'habitual insubordination and behavior amounting to moral turpitude'.

(ii) Discharge is the ending of services for reasons of physical and mental incapacity or continued ill health or similar reasons not amounting to misconduct.

(iii) Retrenchment is the ending of services of a worker on grounds of redundancy.

(iv) Termination is the right of the employer to end the services of a worker by giving notice or wages in lieu of such notice. The notice

25. Sec. 4(2) of the Employment of Labour Standing Orders Act, (1965)

must be 90 days in case of monthly rated workers and 45 days in case of others. Those workers who have been employed for more than a year are also entitled to a compensation. Termination is not appealable. In case of a termination order of a worker who is also the office bearer of a registered trade union, and if it is proved that the termination order was made for his/her trade union activities then the termination order can be appealed against. Sec. 25 of the Act allows individual workers to make complaints to the labour court challenging the legality of the termination order on the ground that he/she had been terminated for his/her trade union activities. Before the amendment of this section in 1985, no other worker other than an office bearer of the of a registered trade union had any right to challenge legality of termination. The employer on the other does not need to follow any particular procedure for terminating an officer of a trade union but he must be able to prove that the termination order is not connected with the trade union activities of the terminated worker.²⁶

The Maternity Benefits Act 1939

This is an Act which was solely aimed at benefiting women workers. The problems of combining the dual roles of bearing children as well as working outside the home was recognized by the legislature. It was one of the earliest Acts passed by the British Government in the sub-continent and it has remained significantly unmodified in the last 50 years or so since it was passed. The basic provisions of the act are: Employers are forbidden from knowingly employing a woman during the six weeks immediately following the date of her delivery, and a woman too is prohibited to take up such employment within that time frame.²⁷ The further lays down that the woman is entitled to maternity benefits for the six weeks immediately preceding as well as

26. Hossain et. al 'No Better Option? Industrial Women Workers in Bangladesh', 78.

27. Sec. 3 of The Maternity Benefits Act, (1939).

six weeks immediately following the date of delivery, but on the condition that she must have been employed by the employer for atleast nine months immediately preceding the date of such delivery²⁸ Thus if the woman gives birth to a child prematurely she loses the benefit that may have accrued to her in case of a normal full term delivery. The procedure of claiming the benefit is somewhat complicated. The woman entitled to such benefit must give notice either orally or in writing to the employer that she expects to be confined within six weeks next following and may therein nominate a person to receive the benefit in case she were to die in childbirth. When such notice has been given to the employer, the employer must permit the woman to absent herself from work from the day following and she becomes entailed to maternity benefit payment. After the first six weeks the worker must again give notice that she has given birth and is thereupon entitled to benefits for the remainder of that period, i.e. the next six weeds. These payments become due to her within 48 hours of producing proof of the delivery of her baby. A woman worker who has failed to give prior notice to the employer may still be entitled to some payment after the birth of the child, if she gives notice to the employer within 7 days delivery of baby.²⁹

A woman is forbidden from working during the period for which she is entitled to be absent from work and both she and her employer is liable to punishment if they contravene this rule.³⁰ An employer is also forbidden from dismissing a woman during the period for which she is entitled to be absent from work and if she is dismissed without sufficient cause within six months before delivery she still cannot be deprived of her maternity benefit.³¹ These are the main provisions of

28. Sec. 4, *ibid.*

29. Sec. 6, *ibid.*

30. Sec. 8, 9, *ibid.*

31. Sec. 7, *ibid.*

the Maternity Benefits Act which no doubt provides some favorable conditions for working women, the procedure for the recovery of such benefits is however complicated and not easily accessible to women specially those who are uneducated are unaware or otherwise unable to give timely notices to the employer.

Most of the above mentioned provisions of law are gender neutral and apply to both men and women workers, but one cannot firmly say that they actually treat men and women on equal grounds, because of a number of factors. Firstly, most of the law in force are quite old and little amendments have been made by taking into account the modern work and employment situations. Unprecedented numbers of women have been entering the formal sector in the last decade and their needs have hardly been taken into account by the legislature. Secondly, some aspects of the seem not to have relevance to the present day situations on the shop floor, thus garments industries today are working night shifts almost regularly even though the night work provision prohibits this under the Factories Act and the Shops and Establishments Act. There is no information as to what percentage of these factories have actually taken permission from the inspector for that purpose. Even though it is well understood that the need for such a provision was there when this Act was introduced, and that it may still be regarded as necessary to some quarters who believe that women must be protected from the attentions of men who assume that night duty is an euphemism for prostitution.³²

Thirdly given the social context of the country which discriminates against women and they lag behind men in education, access to resources, etc., it is only natural that the law will not have the same effect on men and women. Women who are less educated and are

32. Sobhan, S., op. cit. p. 10

even less informed, and also suffer from complexes of inferiority to men that have been ingrained in their psychological makeup, cannot really use the law for their own benefit.

Some other provisions of the labour law have direct reference to women are: In the Bengal Payment of Wages Rules, it is laid down that no deduction should be made from the wages of a person under 15 years or of a woman for breach of contract. On the other hand under the Workman's Compensation Act it has been stated that where compensation has to be distributed No payment of lumps as compensation to a woman or a person under a legal disability shall be made otherwise than by deposit with the commissioner.' Although the law seems to be merely taking into account the actuality of the social situation concerning women but one cannot help feeling that if women are ever to be given the minimum respect and human dignity in society and are expected to take greater part in nation building they must atleast be treated as responsible beings.³³

Conclusion:

Form the above discussion on the ideological and conceptual problems relating to women's work in Bangladesh it is evident that these are major obstacles to the advancement of women's activity in the economy. While discussing the legal framework of such work and employment it is clear that the international law and conventions which Bangladesh has ratified clearly lays down the equality of men and women in this regard. But the question arises as to how much of these commitments are embodied in the domestic law of the country at present in force in Bangladesh. The Constitution of Bangladesh unequivocally declares the principle of equality for all in spheres of life including that of work and employment with few reservations. However some of the provisions of the domestic law are not in full

33. *ibid.*, p.9

consonance with the international conventions in a number of respects. Most of these legislative enactments although not insufficient to deal with labour relations in the country have in certain points failed to treat men and women on equal grounds, moreover they are hardly in concurrence with the present economic and social situation and the need for updating the legal framework for the benefit of the women workers in order to create a better working environment for them cannot be understated. There is need for new legislation and suitable amendments to the existent legal provisions, to help create a harmonious working environment for all workers, including women, in the true spirit of equality. If the law treats them as equals to men it may in time be reflected in the entire labour force.